April 21, 2020

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Jackson Chan**
Tax Registry No. 929872
Military & Extended Leave Desk
Disciplinary Case No. 2017-18321

The above named member of the service appeared before Assistant Deputy Commissioner Paul M. Gamble on April 30, June 25, September 25 and 26 of 2019 and was charged with the following:

**DISCIPLINARY CASE NO. 2017-18321**

1. Said Police Officer Jackson Chan, while assigned to the 81 Precinct, on or about February 16, 2017, was unfit for duty due to the consumption of intoxicants.
**P.G. 203-04, Page 1, Paragraph 1 & 2** **FITNESS FOR DUTY**

2. Said Police Officer Jackson Chan, while assigned to the 81 Precinct, on or about January 16, 2017 and February 16, 2017 did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department in that Police Officer Chan wrongfully possessed cocaine without police necessity or authority to do so.
**P.G. 203-10, Page 1, Paragraph 5** **PUBLIC CONTACT – PROHIBITED CONDUCT**

3. Said Police Officer Jackson Chan, while assigned to the 81 Precinct, on or about February 16, 2017, was unfit for duty due to the ingestion of cocaine.
**P.G. 203-04, Page 1, Paragraph 1 & 2** **FITNESS FOR DUTY**

In a Memorandum dated November 20, 2019, Assistant Deputy Commissioner Paul M. Gamble found Police Officer Jackson Chan Guilty of Specification No. 1 and Not Guilty of Specification Nos. 2 and 3 in Disciplinary Case No. 2017-18321. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues concerning the misconduct for which Police Officer Chan has been found Guilty and deem that a penalty which includes a period of monitoring and testing is warranted.

It is therefore directed that Police Officer Chan be offered a post-trial negotiated settlement agreement in which he shall forfeit thirty (30) suspension days (already served), forfeit all time served on suspended with pay status, submit to ordered breath testing and two (2) ordered drug screening tests, cooperate with counseling, and be placed on one (1) year dismissal probation, as a disciplinary penalty.

If Police Officer Jackson Chan does not agree to the terms of this post-trial negotiated agreement as noted, this Office is to be notified without delay.

Dermot F. Shea
Police Commissioner

POLICE DEPARTMENT

November 20, 2019

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| In the Matter of the Charges and Specifications | : | Case No. |
| - against - | : | 2017-18321 |
| Police Officer Jackson Chan | : | |
| Tax Registry No. 929872 | : | |
| Military and Extended Leave Desk | : | |

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

## CHARGES AND SPECIFICATIONS

1. Said Police Officer Jackson Chan, while assigned to the 81st Precinct, on or about February 16, 2017, was unfit for duty due to the consumption of intoxicants.
   P.G. 203-04, Page 1, Paragraph 1 & 2 FITNESS FOR DUTY-GENERAL REGULATIONS

2. Said Police Officer Jackson Chan, while assigned to the 81st Precinct, on or about and between January 16, 2017 and February 16, 2017, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department in that Police Officer Chan wrongfully possessed cocaine without police necessity or authority to do so.
   P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT-GENERAL REGULATIONS

3. Said Police Officer Jackson Chan, while assigned to the 81st Precinct, on or about February 16, 2017, was unfit for duty due to the ingestion of cocaine.
   P.G. 203-04, Page 1, Paragraph 1 FITNESS FOR DUTY-GENERAL REGULATIONS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 30, June 25, September 25 and 26 of 2019. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Department called Sergeants Paul Aparo and Kinfai Chong, Deputy Inspector Steven Hellman, Police Officer Markland Clarke, Noelle Steele, Doctor Thomas Cairns and Deputy Chief Surgeon Joseph Ciuffo. Respondent testified on his own behalf.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

Based upon the credible, relevant evidence in the record, I find Respondent Guilty of Specification 1. I further find Respondent Not Guilty of Specifications 2 and 3. I recommend that Respondent forfeit 30 suspension days previously served.

# ANALYSIS

The following facts are not in dispute. In the early morning hours of February 16, 2017, Respondent drove from his residence to Rick's Cabaret, located at 50 West 33rd Street in Manhattan, arriving at a little past midnight (T. 316-317, 327). Respondent admitted drinking two beers, two shots of tequila and a bottle of champagne while at the establishment (T. 317, 328-329). Between 0300-0400 hours, Respondent vomited while on the third floor; someone then brought him to a rest room (T. 317-318). Respondent remained in the rest room for an extended period of time and was eventually removed by a club employee using a chair with wheels on it (T. 318, 331-333). Respondent asked the employees to call an ambulance because he felt sick (T. 333). Respondent left the club and entered an ambulance, where he continued vomiting (T. 318-319).

Respondent was questioned in the ambulance by two responding police officers, as well as Sergeant Paul Aparo, Patrol Supervisor for First Platoon, Midtown South Precinct (*Id.*). Respondent identified himself as a Member of Service, told Sergeant Aparo that he had drunk too much and that he felt sick (*Id.*, 335). Sergeant Aparo noticed that Respondent's eyes were bloodshot. He made a preliminary determination that Respondent was unfit for duty before Respondent was transported to [redacted] (T. 24, 319, 335). Sergeant Aparo reported his observations to the chain of command, resulting in the Duty Captain, now-Deputy Inspector (D.I.) Steven Hellman, responding to [redacted] to make a formal fitness for duty determination (T. 24-25).

D.I. Hellman met Respondent at [redacted] at approximately 1100 hours (T. 28). He noticed that Respondent appeared to go in and out of consciousness; Respondent also vomited several times (T. 29-31). D.I. Hellman asked Respondent several questions but he was unable to answer them (T. 30, 35-36). Based upon the foregoing, he found Respondent unfit for

duty; modified his duty status after conferring with the Duty Chief; and notified the [redacted] (T. 32-33, 35-36; Dept. Ex. 1).

While he was in the hospital, a union delegate visited Respondent, as well as a representative of the [redacted] (T. 335-336). Respondent agreed to [redacted] (*Id.*).

Respondent was discharged from [redacted] that morning and was transported to his home by personnel from the [redacted] (T. 336-337). A union representative from the 81st Precinct had already retrieved Respondent's firearm from his residence upon his change of duty status (T. 337-338). Respondent retrieved some personal items and was picked up by employees of [redacted] (T. 336). Upon his admission to [redacted] Respondent submitted a urine sample at approximately 1600 hours as part of the intake process (T. 339; Dept. Ex. 7).

There is no evidence in the record regarding the collection procedures employed by the [redacted] personnel or whether there was an attempt at maintaining a chain of custody for Respondent's sample. That sample was transported to, and analyzed by, a Quest Diagnostics laboratory (Dept. Ex. 7, 8, 9, 10).

The sample showed the presence of the cocaine metabolite in a concentration of 216 nanograms/milliliter[1] (Dept. Ex. 10). This result was reported to [redacted] as a "positive." The

[1] Respondent objected to the admission of this exhibit on several grounds: (1) that the collection procedure employed by [redacted] did not conform to the procedural safeguards afforded to MOS under the NYPD drug screening program; (2) the collection of Respondent's sample and its later transmission to Quest Laboratories did

cutoff level for a "positive" result established by the industry is 100 nanograms/milliliter. The cutoff level for a "positive" result established by the Department for a urine sample is 300 nanograms/milliliter. The report also revealed the presence of ethyl glucuronide, a byproduct of the metabolism of alcohol, in a concentration of 209,000 nanograms/milliliter (Dept. Ex. 10).

Respondent was [redacted] on March 16, 2017, and reported to the Medical Division to provide hair and urine samples for a for cause drug screening (T. 65, 322). Police Officer Markland Clarke collected samples of Respondent's hair and urine following the Department drug screening protocol, maintaining a chain of custody (T. 66-83, 322-324; Dept. Ex. 3, 4, 5, 6). The samples were transmitted to Psychemedics Laboratories for analysis (Dept. Ex. 14).

Chemical analysis of Respondent's hair sample revealed the presence of cocaine metabolite in a concentration of 79. The cutoff level for a "positive" result established by the Department for a hair sample is any value lower than 58.9 nanograms/milliliter. This result was reported to the Department as a "negative." The analysis further revealed the presence of cocaethylene, a compound formed in the body when there is co-ingestion of cocaine and alcohol (T. 187-188, 195; Dept. Ex. 14).

Respondent admitted at trial that he became drunk at the club due to the excess consumption of alcohol and that he was unfit for duty when he was questioned by Sergeant Aparo (T. 317, 329, 333-334). He further admitted that he was drunk when he was treated at the hospital and when he encountered D.I. Hellman (T. 336). Respondent further admitted that he was still drunk when he provided a urine sample at [redacted] that afternoon during his intake

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not establish a chain of custody; and (3) the use of the test would deny Respondent equal protection of the law. The exhibit was admitted into evidence over Respondent's objection; in the interest of judicial economy, the Tribunal afforded him the privilege of a standing objection to each subsequent question and answer regarding the test result (T. 202-211).

processing (T. 340). Finally, Respondent denied ever using cocaine or any other illegal drug (T. 320).

At issue in this case is whether Respondent (1) possessed cocaine, as charged in Specification 2; and (2) ingested cocaine, as charged in Specification 3.

The Department argues that the totality of the evidence, that is: (1) the Quest Laboratory analysis of the urine sample provided by [redacted] (2) the Psychemedics laboratory analysis of the hair sample provided by the Department; and (3) the expert testimony of Doctor Thomas Cairns, a forensic toxicologist, constitutes proof by a preponderance of the relevant, credible evidence that Respondent possessed and ingested cocaine.

Respondent argues that: (1) the urine sample submitted to Quest Laboratory should not be considered as evidence of cocaine possession or ingestion because it was a "clinical" test, as contrasted with a "forensic" test; and (2) the use of the result of analysis of Respondent's hair sample would deny him equal protection of the law.

The following is a summary of the relevant testimony at trial. Doctor Joseph Ciuffo testified that he is the Deputy Chief Surgeon for the NYPD. He has also been the Medical Review Officer for the Department since 2011 in connection with the drug screening program. Dr. Ciuffo oversees the program and reviews all positive test results to explore alternate medical explanations (T. 285-287).

The Department conducts drug testing as a part of pre-employment screening; probationary supervision; a condition of promotion; screening for assignment to specialized units; random testing; and reasonable cause testing (*Id.*). The testing is forensic in nature, the essential element being the creation and maintenance of a chain of custody for samples (T. 290). The screening protocol utilizes hair and urine for the detection of illicit substances (T. 238). The Department collection protocol calls for two urine samples to be collected, with one retained by

the laboratory; with respect to hair samples, three are collected, with one retained by the Medical Division (T. 313). The retained samples operate as a procedural safeguard for the benefit of any MOS whose sample is reported positive and wishes to have his sample re-tested by an independent laboratory (*Id.*).

Department urine samples are analyzed by Quest Laboratories and hair samples are analyzed by Psychemedics Corporation (T. 290-291). The cutoff for reporting positive urine samples to the Department is 300 nanograms: test results greater than the cutoff are reported as positive and those below the cutoff level are reported as negative (T. 292). The cutoff for reporting positive hair samples to the Department is five nanograms (T. 294). Positive test results are reported to the Internal Affairs Bureau and negative results are not (T. 293, 294, 294-295). Regardless of the reason for the testing, the Department applies the same cutoffs with respect to the samples tested (T. 295).

Dr. Ciuffo testified that he was notified of the test results of Respondent's February 16, 2017 urine sample; Dr. Ciuffo characterized the test as "clinical," that being a test which is used for diagnostic purposes [redacted] (T. 297). Dr. Ciuffo denied ever characterizing the test result as "invalid" (T. 301). Dr. Ciuffo conceded that clinical tests are valid diagnostic tools and that he had made use of them in his own medical practice on thousands of occasions (T. 299-300). In Dr. Ciuffo's opinion, the distinction between clinical tests and forensic tests is that the former are used to develop treatment plans and the latter are used to establish the existence of a fact under legal scrutiny (T. 307-308). He testified that the NYPD does not utilize clinical tests in their drug screening program and was unaware of any intention to change that posture in the future (T. 302).

Dr. Ciuffo conceded that the cutoff level for a confirmatory test on a urine sample conducted by Quest Laboratories is 150 nanograms, while acknowledging that the test result from [redacted] was attributed to Respondent was 216 nanograms (T. 300).

Doctor Thomas Cairns testified as an expert in the field of forensic toxicology, as he has done in this forum on over 20 occasions. He is presently a consultant with Psychemedics Corporation but previously worked for the United States Food and Drug Administration for 21 years as a National and International Expert in Mass Spectrometry; Director of the FDA National Center for Toxological Research; and Senior Research Scientist. Dr. Cairns then worked for 24 years at Psychemedics as its Vice-President for Research and Development; Laboratory Director; Scientific Director; and Senior Science Advisor[2]. Earlier in his career, his work was primarily in the area of mass spectrometry of drugs but has spent the past 15 years focusing on hair analysis. (T. 170-172).

Dr. Cairns testified that when a drug is ingested into the body, irrespective of the means of ingestion, the drug is absorbed into the bloodstream and eventually metabolized by the liver. The liver breaks down the drug in order that it may become more water-soluble and excreted through the kidneys and bladder. As the drug and its metabolites pass through the bloodstream, however, they are absorbed into hair follicles as the follicles are fed by the bloodstream below the surface of the skin. As each follicle grows, it calls upon the bloodstream for its molecular building blocks; in doing so, the follicle also traps any drug and its metabolites which are circulating in the bloodstream as the follicle is growing. Hair generally grows 1.3 centimeters per month; thus, a one and one-half inch head hair sample would represent 90 days of growth. This establishes a 90-day "look-back period" for hair analysis, before the drug and its metabolites are expelled from the body (T. 177-178).

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[2] Doctor Cairns' *curriculum vitae* sets forth his education, professional experience and writings (Dept. Ex. 12).

In hair analysis, hair samples are liquefied by a process known as "digestion," which breaks down the structure of hair and releases the drugs that were trapped during ingestion. The liquefied sample is then subjected to an immunoassay screening. The process uses an antibody which is created specifically for the substance being screened for so that it may act as a "lock and key," with the antibody operating as the lock and the suspected substance being the key. The key only fits the lock it is designed for, permitting the detection of low levels of unique compounds, such as cocaine (T. 180).

The immunoassay uses a scale of from 100 to 0, with the cutoff point established near the mid-range, at about 50. If the sample is detected in the range of 0 to 50, the sample is deemed presumptively positive; from 50 to 100, presumptively negative (*Id.*).

If the sample is presumptively positive, the sample proceeds to a mass spectrometry test, which Dr. Cairns likened to molecular fingerprinting. A new hair sample from the same package, approximately 12 milligrams, is washed to remove external contamination and digested again. In the case of a presumptive positive for cocaine, the next step is subjecting the second sample to a liquid chromatography mass spectrometry mass spectrometer (T. 182-183).

The analysis of Respondent's hair sample for cocaine yielded a result of 79, consistent with a presumptive negative, in a toxological sense (T. 183-187, 197; Dept. Ex. 14). The sample also revealed the presence of cocaethylene, a compound formed in the body when there is coingestion of cocaine and alcohol (T. 195). Dr. Cairns explained that the immunoassay represented definitive scientific evidence that cocaine metabolites were present in the amount of approximately two nanograms/10 milligrams; in his opinion, this result was consistent with one to two uses of probably low quality cocaine (T. 197-198). Respondent's sample was not subjected to mass spectrometry because it was presumptively negative (T. 198-199).

Dr. Cairns testified that the Quest Laboratory analysis of Respondent's urine sample would properly be characterized as a clinical test, ordered for some medical reason, and not a forensic test (T. 200-201, 204-205, 206). The Quest Laboratory report also detailed the detection of ethyl glucuronide, a metabolite of ethyl alcohol. While the cutoff for this metabolite is 500 nanograms/milliliter, the sample contained 209,000 nanograms (T. 211; Dept. Ex. 10). The report also detailed the detection of benzoylecgonine, a metabolite of cocaine in the amount of 216 nanograms/milliliter, with the cutoff employed by Quest Laboratory being 100 nanograms (T. 212; Dept. Ex. 10). The report further detailed the date and time of collection as 1627 hours on February 16, 2017 (T. 213; Dept. Ex. 10). After reviewing the Quest Laboratory Report, the calibration summary report and the quantitation report for benzoylecgonine, Dr. Cairns opined that the laboratory procedures employed by Quest Laboratory, with respect to the processing of Respondent's sample, were consistent with standards for forensic drug testing, thereby rendering the information set forth in the reports to be "acceptable data to give a probative interpretation" (T. 216-221; Dept. Ex. 8, 9, 10).

Under questioning by the Tribunal, Dr. Cairns conceded that he was unable to extrapolate backward from the result contained in Department Exhibit 14, to a reasonable degree of scientific certainty, what level of cocaine metabolite would have been present in Respondent's hair sample on February 16, 2017 (T. 259).

*1. Fitness for Duty*

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent was unfit for duty on February 16, 2017 as a result of consuming alcohol, an intoxicant[3]. The strongest evidence of Respondent's unfitness for duty

[3] I do not reach a finding with respect to whether Respondent was unfit for duty due to ingestion of cocaine, either due to its own properties or in combination with alcohol.

are his admissions that: (1) he consumed beer, tequila and champagne between midnight and 0400 hours; (2) he was drunk; (3) he was unfit for duty in the presence of Sergeant Aparo and D.I. Hellman; and (4) he was still drunk [redacted] at 1600 hours.

Respondent's admissions are corroborated by Sergeant Aparo's and D.I. Hellman's independent observations, made several hours apart. Sergeant Aparo testified credibly that he observed Respondent's bloodshot eyes at about 0700 hours as Respondent told him that he had consumed alcohol to excess and felt sick. D.I. Hellman also testified credibly that when he observed Respondent in the hospital at approximately 1100 hours, he was semiconscious, vomiting and unable to respond to questions in an intelligible manner.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

2. *Possession of Cocaine, Ingestion of Cocaine*

I find that the use of the [redacted] urinalysis for disciplinary purposes would violate the standards of fundamental fairness established in this forum. Accordingly, I further find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent possessed cocaine, as charged in Specification 2. Finally, I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent ingested cocaine, as charged in Specification 3.

The essential value of a forensic drug test is that the results of the scientific analysis of a Respondent's sample are obtained under such tightly circumscribed conditions so as to render them generally incontrovertible, and which may be reliably attributed to him to justify a finding of misconduct over his denial that he engaged in the proscribed activity. There is no evidence in the record of any chain of custody procedures which may have been employed by [redacted] in the handling of Respondent's urine sample. In the absence of a chain of custody which leaves little room for doubt that the incriminating evidence found in the substance analyzed came from

Respondent, and only Respondent, there is insufficient evidence upon which to base a finding of Guilty.

Moreover, procedural due process requires that Respondent be provided with a fair opportunity to mount a defense to the charges. There is no evidence in the record that [redacted] afforded Respondent the procedural protection of obtaining and retaining a second urine sample for independent testing should he decide to challenge the results of the analysis by Quest Laboratories. This protection is afforded to every Member of Service who is subjected to Departmental testing. To sanction the suspension of this protection in Respondent's case would be arbitrary and contrary to established Department policy.

This is not the equivalent of a finding that there was *no* evidence of Respondent's possession and ingestion of cocaine; to the contrary, the totality of the credible, relevant evidence raises a strong inference that there was cocaine in his system on February 16, 2017:

1. The detection of the cocaine metabolite in the urine sample he provided to [redacted][4] later on the same day of his episode in the club;
2. The detection of the ethyl alcohol metabolite in the same urine sample in such quantity as to warrant a designation of "High" by Quest Laboratory, supporting an inference that Respondent had consumed large quantities of alcohol;
3. The detection of the cocaine metabolite in his hair sample obtained 28 days after the incident at the club; and
4. The detection of cocaethylene in the same hair sample, supporting an inference that cocaine and alcohol were coingested.

[4] While Respondent's argument that the [redacted] sample should not be attributed to him for various reasons set forth at length in the record of trial, he did not deny that he provided such a sample or that the sample tested was his. On that basis, the [redacted] sample will be discussed for the purposes of my legal analysis as belonging to Respondent.

However, the factors weighing against a finding of misconduct are as follows:

1. While the cocaine metabolite found in the urine sample Respondent provided to [redacted] was present in such quantity to overcome the 100 ng/ml threshold of that test, it was below the NYPD cutoff of 300 ng/ml;
2. The cocaine metabolite detected in the hair sample Respondent provided to NYPD after his release from [redacted] was not present in sufficient quantity to cross the threshold of 50 ng and was reported initially to the Department as a "negative" result; and
3. Dr. Cairns' assertion that he would be unable to extrapolate, to a reasonable degree of scientific certainty, the amount of cocaine metabolite which would have been present in Respondent's hair sample on February 16, 2017.

The agreement Respondent entered into with the Counseling Unit on February 16, 2017, contains the following provision:

> "Prior to completion of the [redacted], the MOS understands that they are required to submit to "DOLE" testing. In addition, Outpatient Providers toxicology results will be held to *the same standard as a Department "DOLE"* (emphasis added)(If test results prove positive for illegal drugs, administrative action will be taken by the Department. If results prove positive for alcohol/prescription drugs and/or substance abuse/dependence addressed [redacted], client's current [redacted] may be extended or client may be expected to start [redacted] over)."

(Dept. Ex. 1).

In interpreting the legal significance of the term "same standard," the Tribunal will employ the plain meaning of the words. There is no dispute that: (1) the Quest Laboratories result was premised upon a lower cutoff than the NYPD cutoff by a factor of 3; (2) there is no evidence that [redacted] established a chain of custody for Respondent's sample, in contrast with the NYPD requirement that a strict chain of custody be established and maintained; and (3) there is no evidence that [redacted] retained a second urine sample for independent testing, all deviations from the standards employed in Department DOLE testing.

In the view of the Tribunal, the [redacted] testing regimen does not meet the "same standard" as Department testing. Put another way, if Respondent had provided his urine sample to the Department on February 16, 2017, instead of [redacted], perhaps we would have a

reasonable degree of certainty that the sample was Respondent's, and the 216 ng/ml result would have been reported as a negative. As Dr. Ciuffo testified credibly, no disciplinary action would have been contemplated based upon that report. In addition, Department testing also resulted in a negative.

The Department drug screening program can only be a credible deterrent to misconduct if its procedures are fair. Despite the earnestness of the Department's case, I find that the evidence in support of the allegations in Specifications 2 and 3, while otherwise scientifically valid, does not meet the standards of proof and procedural due process established by this Department for adjudicating allegations of this type. Accordingly, I find Respondent Not Guilty of Specifications 2 and 3.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. (*see Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

The Department Advocate has recommended that Respondent be terminated from his employment. Inasmuch as I have found him Not Guilty of Specifications 2 and 3, this penalty recommendation is excessive.

Respondents in previous cases who have been found unfit for duty due to intoxication in social and public settings have forfeited from 15 to 20 vacations days (*Disciplinary Case No. 2019-20313* [August 22, 2019][Twelve-year police officer with no disciplinary record negotiated a penalty of 20 vacation days for consuming intoxicants to the extent that he was unfit for duty]; *Disciplinary Case No. 2016-15534* [December 21, 2016][Four-year police officer with no prior

disciplinary history negotiated a penalty of 20 vacation days for wrongfully consuming an intoxicant to the extent that he was unfit for duty]; *Disciplinary Case No. 2015-14009* [January 13, 2016][Four-year police officer with no prior disciplinary history negotiated a penalty of 15 vacation days for, while off-duty, consuming an intoxicant to the extent that he was unfit for duty]).

Respondent's behavior was unprofessional and failed to meet the high standard of readiness expected of Members of Service. In addition, he placed his personal well-being in jeopardy by consuming several types of alcohol over a short period of time, the deleterious effects of which would have been apparent to any rational adult. While Respondent was in the rest room, he apparently either fell unconscious or went into an alcohol-induced blackout; whichever the case, the staff at the club had to intervene to remove him from the rest room.

While Respondent denied that he was experiencing an emotional upheaval at the time he decided to go to the club, the evidence strongly suggests that his binge drinking was an impulsive act; I find this to be somewhat mitigating. In addition, I find it mitigating that Respondent was not armed while he drank to excess. Finally, having witnessed Respondent's demeanor during the trial, I found him to be sincere and remorseful.

Accordingly, I recommend that Respondent forfeit the 30 suspension days previously served.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

DISAPPROVED
APR 21 2020
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JACKSON CHAN
TAX REGISTRY NO. 929872
DISCIPLINARY CASE NO. 2017-18321

Respondent was appointed on July 1, 2002. On his last three annual performance evaluations, he received 3.5 overall ratings of "Highly Competent/Competent" for 2015 and 2016 and a 3.0 overall rating of "Competent" for 2014.

[redacted]

Respondent has no formal disciplinary history. On May 12, 2017, Respondent was placed on Level 1 Discipline Monitoring in connection with the instant matter. Monitoring remains ongoing. On August 20, 2018, Respondent was suspended after receiving charges and specifications in the instant matter.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials